IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 4532 of 1999

For Approval and Signature:

HON'BLE MR JUSTICE KS JHAVERI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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GSRTC - Petitioner(s)

Versus

GULAMRASUL IBRAHIMBHAI SHAIKH - Respondent(s)

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Appearance :

MR HS MUNSHAW for Petitioner No(s).: 1.
MR ARVIND K THAKUR for Respondent No(s).: 1.
MR KS TAMAYACHE for Respondent No(s).: 1.

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CORAM : HON'BLE MR JUSTICE KS JHAVERI

Date : 02/08/2005

ORAL JUDGMENT

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1. This petition is directed against the judgment and award dated 17th December, 1998 passed by the Labour Court, Nadiad in Reference [L.C.N.] No. 343/96, whereby the Labour Court has directed the petitioner Corporation

to pay 60% back wages for the period commencing from 8th June, 1996 to 30th April, 1999.

2. The short facts of the case are that the respondent was working as a Driver with the petitioner Corporation. On 3rd October, 1995, when the respondent was on duty, due to his negligence and carelessness the bus had met with an accident injuring passengers and thereby damaging the bus amounting to Rs.4,000=00. Pursuant to that charge sheet was issued and departmental inquiry was initiated against him. Since the charges levelled against the respondent was proved, he was dismissed from the service w.e.f. 8th June, 1996.

2.1. Being aggrieved by the said dismissal order, the respondent raised an dispute which was ultimately referred to the Labour Court, Nadiad for adjudication. The Labour Court after appreciating the materials produced before it, passed the impugned award. Hence, this petition.

3. I have heard the learned counsel for the parties and have perused the materials produced on record. While awarding back wages the Labour Court has not given any

cogent reasons as to on what basis it has awarded back wages to the respondent. In view of the principle laid down by the Apex Court in the case of Ram Ashrey Singh v. Ram Bux Singh reported in (2003) II L.L.J. p. 176, a workman has no automatic entitlement to back wages, since it is discretionary and has to be dealt with in accordance with the facts and circumstances of each case.

3.1. In case of General Manager, Haryana Roadways v. Rudhan Singh reported in J.T. 2005(6) S.C.C. p. 137, it has been held that an order for payment of back wages should not be passed in a mechanical manner, but, a host of factors are to be taken into consideration before passing any such order. Hence, the impugned award is required to be quashed and set aside.

4. However while exercising powers under Section 11(A) of the Industrial Disputes Act, 1947, the Labour Court has not imposed any penalty. Looking to the past conduct wherein the respondent had committed 45 defaults and also the charges levelled against the respondent wherein due to negligence of the respondent, the petitioner has suffered great loss, I am of the opinion that the Labour Court ought to have imposed a penalty of

stoppage of two increments with future effect.

5. For the foregoing reasons, the petition is allowed. The impugned award dated 17th December, 1998 passed by the Labour Court, Nadiad in Reference [L.C.N.] No. 343/96, is quashed and set aside. Rule is made absolute to the aforesaid extent with no order as to costs.

[K.S. JHAVERI, J.]

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